

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1934 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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MIYAJIBHAI RAJEBHAI VAGADIYA

Versus

RASIKBA LAXMANSINH PARMAR POWER OF ATTORN OF D.L.PARMAR

Appearance:

MR VIPUL S MODI for Petitioners

MR JJ YAJNIK for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/12/2000

ORAL JUDGEMENT

#. The applicants herein are the original plaintiffs of Special Civil Suit No.28/93 which is pending in the court of Civil Judge (SD) at Palanpur. It is the case of the plaintiffs that, they are residing in the houses which are constructed in Survey No.160/1. That the defendant No.1 is the mother of the defendant No.2. The defendant No.2 is residing at Jodiya and she has executed power of

attorney in favour of the defendant No.1. It is the say of the plaintiffs that, they have agreed to purchase some land admeasuring 15 fts. on consideration of Rs.45,000/- and agricultural land for Rs.6 lakhs and they have paid part consideration by cash payment and that they are cultivating the aforesaid land in question. Since the defendants are trying to snatch away the possession, the aforesaid suit for permanent injunction was filed. It was also prayed in the plaint in paragraph 2 that the defendants should also be directed to execute registered sale deed in favour of the plaintiffs. The aforesaid suit was filed on 15.2.1993. Thereafter, by Exh.111 the plaintiffs gave an application under Order 6, Rule 7 on 6.9.1996. The plaintiffs wanted to add paragraph 7-A in the original plaint. The amendment which was sought for is of the following nature.

7A. "That the plaintiffs were always ready and willing to perform their part of contract and were willing to pay remaining part of sale consideration and they are willing to get sale deed executed in their favour and the amount in question regarding remaining part of sale consideration is deposited in Dena Bank of Danta Town."

#. Learned trial Judge, however, ultimately, after hearing both the sides, rejected the said prayer for amendment of the plaint. The said order is impugned in the present revision application at the instance of the original plaintiffs.

#. At the time of hearing of this revision application, learned advocate Mr.Modi argued that the aforesaid amendment in question is most innocuous and the nature of the suit is not going to be changed. In paragraph 2 of the plaint also, there was specific prayer for specific performance of the agreement to sell and now they want to add by amendment that the plaintiffs are ready and willing to perform their part of contract. According to them, therefore, amendment is absolutely innocuous and it cannot be said that by the said amendment, nature of the suit will be changed.

#. Mr.Yajnik on the other hand argued that, by the present amendment the nature of the suit will be changed. He also further submitted that, amendment was given after a period of more than three years, and that, prayer regarding specific performance will also become time barred. He relied upon the judgment of the Honourable

Supreme Court reported in AIR 1995 SC 1768, K.Raheja Constructions Ltd. Vs. Alliance Ministries and others.

#. After hearing both the learned advocates for the parties, I am of the opinion that the trial court has committed an error of jurisdiction in refusing the amendment in question. It is well settled preposition of law that the amendment in the pleadings can be granted at any stage. The trial court has refused the amendment absolutely on irrelevant ground. As a matter of fact, in order to see that there is effective decision on the merits of the case, amendment is required to be granted liberally in order to prevent multiplicity of proceedings. It is required to be noted that, even in the original plaint there is already a prayer in clause 2 of the plaint for directing the defendants to execute the sale deed. Mr.Yajnik however argued that there are no pleadings about readiness and willingness. It is no doubt true that there is no such pleadings in the original plaint. However, in the original plaint there is a specific prayer for getting the sale deed executed. It is no doubt true that requisite court fees was not paid at the time of filing the suit regarding this prayer, but such innocuous pleadings regarding readiness and willingness part cannot be refused on such ground.

#. So far as the decision, on which Mr.Yajnik has relied is concerned, the same is not applicable to the facts of the present case, as in that case, plaintiff had not asked for the relief of specific performance in the original suit itself. However, in the instant case, in the original plaint itself, prayer was already there for getting the sale deed executed and by the present amendment the plaintiffs want to add the pleadings regarding readiness and willingness part only. There is no prayer for amendment of the prayer clause itself. When there is no amendment sought in the prayer clause, naturally, there is no question of applying any bar of limitation. By granting this amendment, no prejudice is likely to be caused to the defendants. The trial court, therefore, has failed to exercise the jurisdiction vested in it by law and on an absolutely irrelevant ground, it has refused the said amendment. In order to see that, the suit may not fail for want of appropriate pleadings, amendment sought for by the plaintiffs was required to be granted. It also cannot be said that there is any change of cause of action in any manner. If any additional court fee is required to be paid on the basis of the prayer for getting the sale deed executed, the plaintiffs should immediately pay the same especially when the present suit is filed on fixed court fees stamp.

#. In my view, therefore, amendment prayed for by the plaintiffs was required to be granted by the trial court and at this stage reference is required to be made to the decision in the case of Rajya Tulsibhai Patel Vs. Banner Enterprise and others reported in GLR 1987, Vol.28, page 1082, wherein the court has stated that, in order to have compliance of the provisions of law regarding averments like "readiness and willingness", if amendment is given, such amendment should be granted.

#. In that view of the matter, this revision application is allowed. The order of the trial court below Exh.111 in Special Civil Suit No.28/93 is quashed and set aside. The amendment application given by the plaintiffs in the suit is allowed. The plaintiffs to pay deficit court fees on the basis of prayer regarding execution of the sale deed. The said deficit court fees to be paid, in any case, within a period of two months from today. The plaintiffs to carry out the amendment in the original plaint. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)